SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 370

MARIAN S. HONEYMAN,

Appellant,

vs.

HERBERT G. HANAN, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF HERBERT W. HANAN, DECEASED,

Appellee.

STATEMENT AS TO JURISDICTION.

The appellant contends that the Supreme Court of the United States has jurisdiction upon an appeal to review the judgment of the Supreme Court of the State of New York in question.

This appeal comes directly within the provision of Section 237 of the Federal Judicial Code (28 U. S. C. #344). It is a final judgment of the highest Court of the State of New York in which a decision in the suit could be had. There is drawn in question the validity of a Statute of the State of New York and the decision of the Court of Appeals of the State of New York is in favor of its validity.

The New York Statute, Chapter 794 of the Laws of 1933, reads as follows:

"AN ACT to amend the civil practice act, in relation to deficiency judgments in actions to foreclose mort-

gages on real property and actions to recover judgments on bonds secured by mortgages on real property.

"Became a law August 28, 1933, with the approval of the Governor Passed, on message of necessity, three-fifths being present.

"The People of the State of New York, represented in Senate and Assembly, do enact as follows:

"SECTION 1. It is hereby declared that a serious public emergency affecting and threatening the welfare, comfort and safety of the people of the state and resulting from the abnormal disruption in economic and financial processes, the abnormal credit and currency situation in the state and nation, and the abnormal deflation of real property values and the curtailment of incomes by unemployment and other adverse conditions, exists. Therefore, in the public interest, the necessity for legislative intervention by the enactment of the provisions hereinafter prescribed, and their application until July first, nineteen hundred thirty-four, is hereby declared as a matter of legislative determination.

"§ 2. The civil practice act is hereby amended by inserting therein two new sections, to be sections ten hundred and eighty-three-a and ten hundred and eighty-three-b, as follows:

"1083-a. LIMITATION UPON DEFICIENCY JUDGMENTS DURING EMERGENCY PERIOD.—No judgment shall be granted for any residue of the debt remaining unsatisfied as prescribed by the preceding section where the mortgaged property shall be sold during the emergency, except as herein provided. Simultaneously with the making of a motion for an order confirming the sale or in any event within ninety days after the date of the sale, the party to whom such residue shall be owing may make a motion in the action for leave to enter a deficiency judgment upon notice to the party against whom such judgment is sought or the attorney who shall have appeared for such party in such action. Such notice shall be served personally or in such other

manner as the court may direct. Upon such motion the court, whether or not the respondent appears, shall determine, upon affidavit or otherwise as it shall direct, the fair and reasonable market value of the mortgaged premises as of the date of sale or such nearest earlier date as there shall have been any market value thereof and shall make an order directing the entry of a deficiency judgment. Such deficiency judgment shall be for an amount equal to the sum of the amount owing by the party liable as determined by the judgment with interest, plus the amount owing on all prior liens and encumbrances with interest, plus cost and disbursements of the action including the referee's fee and disbursements, less the market value as determined by the court or the sale price of the property whichever shall be the higher. If no motion for a deficiency judgment shall be made as herein prescribed the proceeds of the sale regardless of amount shall be deemed to be in full satisfaction of the mortgage debt and no right to recover any deficiency in any action or proceeding shall exist.

"§ 1083-b. JUDGMENTS IN ACTIONS ON BONDS.—In any action pending at the time this action as hereby added takes effect, or hereafter commenced during the emergency, other than an action to foreclose a mortgage, to recover a judgment for any indebtedness secured by a mortgage on real property and which originated simultaneously with such mortgage and which is secured by such mortgage, against any person or corporation directly or indirectly or contingently liable therefor, any party against whom a money judgment is demanded, shall be entitled to set off the fair and reasonable market value of the mortgaged property less the amounts owing on prior liens and end encumbrances. In any action to foreclose the mortgage commenced after the emergency as defined by the law shall have expired, a deficiency judgment may be recovered as though this section had not been enacted but the amount of any money judgment recovered as provided

in this section shall be deducted in computing such deficiency judgment.

"3. If any section, part or provision of this act shall be declared unconstitutional or invalid or ineffective by any court of competent jurisdiction, such declaration shall be limited to the section, part or provision directly involved in the controversy in which such declaration was made and shall not affect any other section, provision or part hereof.

"4. The period of the emergency hereby declared shall be from the date this act takes effect until July first, nineteen hundred thirty-four. This act shall not apply to mortgages dated on or after July first, nineteen hundred thirty-two, or to any bond, collateral bond, guarantee, or extension agreement or other agreement or writing concerning or delivered in connection with any indebtedness secured by a mortgage dated on or after July first, nineteen hundred thirty-two."

By amendment, the period of emergency has been extended to July 1, 1937 (Laws of 1934, Chapter 277; Laws of 1935, Chapter 2; Laws of 1936, Chapter 87).

The judgment sought to be reviewed is that of the Court of Appeals of the State of New York, bearing date June 19, 1936, affirming the judgment of the Appellate Division of the Second Department, dated January 13, 1936, which affirmed the judgment of the Special Term, Kings County, dated July 12, 1935. The application for an appeal was presented to the Presiding Judge of the Court of Appeals of the State of New York on September 2, 1926.

This action was brought to establish the petitioner's claim against the decedent's estate. No answer was served and no issue of fact is presented.

The amended complaint sets forth a cause of action upon a bond or instrument in writing evidencing a loan or advance of sixty thousand dollars ($60,000) made August 17,

1920, by petitioner's guardians to the respondent's testator and his father, John H. Hanan, and his brother, Addison G. Hanan. This written instrument, attached to the complaint, Exhibit A, is the joint and several obligation of the obligors to pay the said sum of sixty thousand dollars ($60,000) and interest. As security for the loan the respondent's testator and his co-obligors assigned to petitioner's guardians a bond of the John H. Hanan Realty Co. executed January 14, 1907, together with a mortgage on certain real estate in New York City and title to which had become vested in respondent's testator and his co-obligors.

The 1920 obligation sued upon in his action recites that it is given to induce the obligee to advance the said sum of sixty thousand dollars ($60,000) upon the 1907 bond and mortgage to John H. Hanan Realty Co. and as further and additional security for the payment of the 1907 bond and mortgage.

John H. Hanan and Addison G. Hanan died prior to 1933. In 1933 Herbert W. Hanan, respondent's testator, died, and payment of interest ceased. Default existing in the payment of interest and taxes on the property mortgaged to secure the Realty Company's 1907 bond, foreclosure proceedings were brought, and upon a judgment of foreclosure and sale against the Realty Company the mortgaged real estate was sold. After application of the proceeds of sale to the amount due for principal, interest, taxes and expenses, there was a deficiency in the sum of $57,969.34. Your petitioner made application for a deficiency judgment against the John H. Hanan Realty Co., which was denied.

Your petitioner, having exhausted her remedies as against the collateral, brought this action upon the 1920 bond against the respondent to establish her claim for the

balance due her upon the loan against the estate of respondent's decedent, Herbert W. Hanan.

As before stated, no issue was joined, but the foregoing facts appear from the complaint. The respondent moved the Court at Special Term for judgment dismissing the amended complaint upon the ground that it did not state facts sufficient to constitute a cause of action. The court granted the motion in the following memorandum of decision:

> "Motion by defendant to dismiss the amended complaint is granted. The mortgage moratorium laws apply to the facts alleged in the said complaint."

and judgment of dismissal was entered with costs. An appeal was taken to the Apellate Division, Second Department, and the said judgment of the Special Term was affirmed, with costs, without any opinion whatever. The Court of Appeals granted the motion for leave to appeal to the Court of Appeals, and the appeal was argued and judgment of the lower court affirmed, with costs, without any opinion. A motion was made to the Court of Appeals for an order amending its remittitur and the said motion was granted. An order was thereafter entered amending the remittitur by adding the words:

> "A question under the Federal Constitution was presented and necessarily passed upon by this Court. The plaintiff contended that chapter 794 of the Laws of the State of New York, enacted in 1933, as amended (secs. 1083-a and 1083-b of Civil Practice Act), impair the obligations of contracts, and thus violate article 1, section 10, of the Constitution of the United States. This court held that such laws did not violate said provision of article 1, section 10, of the Constitution of the United States."

The question of the constitutionality of the Mortgage Moratorium Laws of the State of New York was presented

to the Special Term and to the Appellate Division, as well as to the Court of Appeals, by argument and written briefs. The theory of the decision appealed from is obviously that where the court refuses a deficiency judgment in foreclosure, under the act in question, the security must be deemed to be of equal value to the debt and its sale to be in full satisfaction of the debt, regardless of the actual price for which the same was sold. As a result, appellant is without any remedy or means of establishing or collecting her claim against decedent's estate for the balance due her upon her undisputed claim for moneys loaned, upon the theory that Chapter 794 of the Laws of 1933, the sale of the security satisfied the debt and barred action upon the primary obligation here sued upon. The question presented is a substantial one and involves the right of the New York Legislature to destroy appellant's contract rights without compensation therefor.

The Supreme Court of the United States has jurisdiction to review the decision appealed from. In *Home Building & Loan Association* v. *Blaisdell*, 290 U. S. 398, this jurisdiction was exercised under similar circumstances.

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